

**HAMPTON BOARD OF SELECTMEN
SELECTMEN'S MEETING ROOM
MAY 14, 2007 – 7:00 PM**

PRESENT: Ben Moore, Chairman
Bill Lally, Vice Chairman
Virginia Bridle-Russell
Rick Griffin
Fred Welch, Town Manager
Maureen Duffy, Administrative Assistant

REGRETS: James Workman

HEARING (RSA 231:75) - 13 G Street claim for damages from grade change

Representing the Rapuano family (13 G Street property owners) was Francis G. Murphy, Esq. The property owners are claiming damages for a grade change that occurred as a result of the Beach Infrastructure Project. Attorney Murphy provided packages to the Selectmen with documents related to his clients' claim. The property owners are claiming that the foundation of their home was cracked by nearby excavation work. He noted that when trench work is done, sheeting and bracing is necessary to prevent ground instability. Attorney Murphy argued that the contractor, Zoppo breached their duty by not bracing the ground soil properly which resulted in the structural damage. He believes that work was done on G Street on four different occasions.

He also discussed the heavy equipment that was used in the area that created excessive vibration near the Rapuano property. Attorney Murphy described the damage to the north facing basement wall which has significant cracks that are believed to have been caused by the construction work along G Street. The cracks in the foundation have created an unstable condition and it is feared that the structure may collapse. According to the engineering firm hired by the property owners, the soils shifted during the excavation causing the front porch (secured by rebar) to settle and pull on the north facing wall of the basement which ultimately caused the foundation to crack. It is anticipated that the damage will cost approximately \$57,300 to repair.

Soil near the ocean is very moist and water tables are high. For that reason a method called dewatering is used during excavation to stabilize trench walls. Attorney Murphy alleged that the construction occurred directly in front of the Rapuano home and the heavy equipment used during the excavation caused the soil to shift because Zoppo did not take proper precautions (i.e. sheeting) to stabilize the soil.

Mr. Murphy then referred to a boring report that indicates there is peat nine feet below the ground surface. He also noted that there was no preconstruction survey done for any of the property or structures in the construction area.

David J. Donovan, Esq., representing Zoppo Corporation and the Town of Hampton discussed the alleged claim. He noted the statute which relates to "Repair of Highways by Towns" does not discuss soil settlement by vibration. It relates only to the raising or lowering of the roadway. He said that the claim should be in the Superior Court of New Hampshire and not before the Board of Selectmen. Attorney Donovan mentioned that the Selectmen must view the premises, assess the damages and deliberate within 30 days after the applicant has filed with the Town Clerk.

Attorney Donovan noted that RSA 231:75 is a strict liability statute and there has been no evidence provided that refers to the issue of grade change. He pointed out that the building is 86 years old and the porch is 24 years old. Attorney Donovan also discussed the additional costs that a preconstruction survey would have added to the total of the Beach Infrastructure Project.

According to Attorney Donovan the claimant has yet to prove contractor negligence. He said that traces of fungus have been found in the foundation cracks indicating significant time duration (i.e. before construction).

Mr. Lally believes that the claim should be in court rather than before the Board of Selectmen.

Attorney Murphy said that there was a change in grade as there was a trench which would be considered a grade change. In the course of laying sewers there was a disruption of soil, causing unstable soil resulting in structural problems.

The Selectmen will view the property at 13 G Street on May 21 at 6:15 p.m. The deliberation will be held during the regularly scheduled meeting.

Chairman Moore called the meeting to order at 7:00PM and introduced those in attendance

SALUTE TO THE FLAG

I. ANNOUNCEMENTS AND COMMUNITY CALENDAR

Chairman Moore noted that Mr. Workman is absent tonight and will be unable to participate in the decision regarding the grade change as only the Selectmen who were present during the hearing will be able to participate in the deliberation.

Mr. Moore announced the Hampton Garden Club plant sale this Saturday starting at 8 a.m. to 1 p.m. at the old Courthouse. More information is on Channel 22 and on the Town website.

Mr. Griffin reminded residents that the Tow Show is this Sunday at Hampton Beach.

II. APPOINTMENTS

1. BOB ESTEY – FIRST HALF TAX WARRANT & BARN EASEMENTS

Assessor Estey requested that the Board sign the 2007 First Half Real Estate Tax Warrant. The signing of the warrant enables the Tax Collector to issue tax bills totaling \$23,016,455.39.

Mr. Lally MOTIONED to sign the First Half Tax 2007 Real Estate Tax Warrant totally \$23,016,455.39. **Mrs. Bridle-Russell SECONDED.**

Discussion:

Mrs. Bridle-Russell asked if the property owners have received notice of recent reassessment. Mr. Estey said that the assessment notice will accompany the tax bill. It is anticipated that tax bills will be mailed by June 1st.

VOTE: UNANIMOUS FOR

A Public Hearing was scheduled for June 11 for two Barn Easements located at 93 Locke Road (Map 179 Lot 57) and 687 Exeter Road (Map 14 Lot 5).

2. MIKE SCHWOTZER – FINANCE DEPARTMENT UPDATE

Mr. Schwotzer reviewed the financial statements with the Board. The Board appreciates the summary that Mr. Schwotzer provides along with the financial statements and would like to see it posted on the website for residents.

There were comments on the high demand for public assistance and that it is likely that the Welfare Department will be over budget.

Mrs. Bridle-Russell requested that the social service agencies be notified about the status of their warrant articles and to send a letter to release the funds.

3. JOHN NICKERSON – CHANNEL 22

Chairman of the Cable TV Advisory Committee, John Nickerson addressed the Board. As part of the agreement between the Town and Comcast the Cable Committee receives four percent of the revenues generated by Comcast in Hampton for the purpose of supporting the Town's broadcasting capabilities. There is currently \$129,000 in the cable account.

During the April 25, 2007 Cable TV Advisory Committee meeting a motion was made to award a scholarship to Alex Mason for \$500 a year for four (4) years to be paid upon satisfactory completion of courses. Approximately three years ago an intern did receive a scholarship from the TV Committee.

Mr. Nickerson reported on the successful taping and broadcasting of the Hampton Beach Area Precinct Commission meeting last Wednesday. Mr. Nickerson noted that the Precinct Commission meetings will be starting at 5:30 p.m.

The Cable Committee is considering hiring a consultant to take a look at the Hampton broadcasting system in hope of going digital. It is the concern of the Committee to purchase new equipment and then have it obsolete within a few years or months. For that reason the Committee would like to have a consultant recommend a purchasing strategy.

Mr. Lally MOTIONED to authorize the scholarship to Alex Mason based on the criteria and condition set out by the Cable TV Advisory Committee. **Mr. Griffin SECONDED.**

VOTE: UNANIMOUS FOR

Channel 22 Chairman Nickerson also noted that it is the objective of the Committee to hire a fulltime employee.

Mr. Nickerson has submitted a minority report to the Selectmen. He opposes the Committee's request to hire a consultant for a number of reasons. He suggested that if the Board considers hiring a consultant that the Town follows a bidding process.

Mr. Nickerson asked who he should report to. The Selectmen suggested that he continue to report to the Board and that Mr. Moore can be the point of contact.

The Board requested that the number of members be confirmed prior to appointing Bill Lowney as a member of the Committee.

Brad Jett is currently the consultant and has been authorized to work up to 20 hours a week. Mr. Jett records video clips as advertisements for Recreation & Parks special events and makes DVD copies upon request.

It was the consensus of the Selectmen to not support hiring a consultant to review and report on the equipment requirements for Channel 22 at this point in time.

Mr. Welch suggested contacting the Public Utilities Commission to request a list of cable providers and request bids for a new contract.

The Cable Committee is working at providing a wireless microphone system in the Selectmen's meeting room.

4. GREG GRADY & MAUREEN BUCKLEY – SAND SCULPTURE COMPETITION

Maureen Buckley, Chairman of the Hampton Beach Village District and Greg Grady, the Hampton Beach Sand Sculpture Competition Coordinator addressed the Board. Mr. Grady thanked the Board and Town departments for their support in past years.

The Competition is a very popular event and the Coordinator is seeking assistant from various Town departments. Fencing will be required from the Public Works Director on June 14 and then picked up on June 29. The event will also need the assistance of the Fire Department to fill competition barrels on June 20th. To prevent vandalism to the sand sculptures an increase in police presence was also requested during June 22 and 23. The Event Coordinator is also seeking volunteers to help out during the event.

5. ADAM A. TORREY – NEW WATER STORAGE TANK ON MILL RD & TRENCH APPLICATION

Adam A. Torrey, Operations Supervisor for Aquarion Water Company and another representative addressed the Board. The project will need to go before the Planning Board for approval however, the Water Company wanted to inform the Selectmen of their intentions. The Mill Road water storage tank is 90 years old and needs to be replaced to meet system pressures, peak hour demands, and provide efficient fire protection. The representatives recommend a new one million gallon water storage tank (NH Department of Environmental Services concurs with size).

Mr. Torrey is not prepared to discuss the K Street trench application in detail. It is likely that Aquarion Water Company representatives will be meeting with Public Works Director Hangen to discuss the required cash deposits prior to construction in lieu of a bond.

The Board of Selectmen recessed the meeting to enter into a non-meeting with legal counsel.

6. ARTHUR NADEAU - SEAWALL

Mr. Nadeau on behalf of the property owners for the following: 1062, 1064 and 1066 Ocean Boulevard is coordinating the efforts to rebuild the seawalls in front of these properties. The seawalls were destroyed by the April rainstorm and high tide and desperately need to be replaced. The neighbors are working together to share the expense and work related to rebuilding the seawall. The property owners require the Selectmen's approval to traverse the beach from the Plaice Cove area north to their properties. In addition the Selectmen's permission is required for rip-rap to be placed in front of the seawall on Town property. The proposed permanent impact to the beach would be an area of 156 feet long by 20 feet wide.

Mr. Lally questioned how much Town land should be used to rebuild seawalls. Mr. Welch discussed the importance of a concrete seawall accompanied by rip-rap in order to protect structures along the seashore. He also pointed out that it is in the best interest of the Town and tax base to protect ocean front property.

Mr. Griffin MOTIONED to give the Selectmen's permission generally for the restoration of the existing seawall and the placement of rip-rap in the previous footprint located on Town property (permanent impact to the beach is 156 feet long by 20 feet wide) on the seaward side of 1062, 1064, and 1066 Ocean Boulevard. **Mrs. Bridle-Russell SECONDED.**

Discussion:

It was noted that there is a need to protect ocean front property. There was also discussion but no decision on grandfathered seawalls.

VOTE: 3 FOR
Lally - OPPOSED

The Board then addressed specifically, the potential impacts on Town property of allowing this work.

Mrs. Bridle-Russell MOTIONED to permit the property owners of 1062, 1064, and 1066 Ocean Boulevard access to Town property for the purpose of repairing and reinforcing the previously existing seawall in the same footprint. Access will be granted upon receiving a copy of the contractor's comprehensive insurance certificate, for at least \$1 million, naming the Town of Hampton as an additional insured. In addition the wetlands must be restored in accordance to Conservation Commission criteria. **Mr. Griffin SECONDED.**

Discussion:

Mr. Welch recommended that contractors working on seawalls should provide documentation that they have a workers' compensation policy.

VOTE: 3 FOR
Lally - OPPOSED

7. BARBARA MCGREGOR – SEAWALL

Barbara McGregor is the property owner of 1054 Ocean Boulevard. She has come before the Board of Selectmen to request permission to repair and reinforce the seawall in front of her property in the same current footprint.

Mr. Griffin MOTIONED to permit the property owner of 1054 Ocean Boulevard access to Town property for the purpose of repairing and reinforcing the previously existing seawall in the same footprint. Access will be granted upon receipt of the contractor's comprehensive insurance certificate, for at least \$1 million, naming the

Town of Hampton as an additional insured. In addition the wetlands must be restored in accordance to Conservation Commission criteria. **Mrs. Bridle-Russell SECONDED.**

Discussion:

All state and Town permits will be required prior to project execution.

VOTE: UNANIMOUS FOR

8. TRACY EMERICK – PLANNING BOARD UPDATE

Postponed

9. MARY-LOUISE WOOLSEY – BUDGET COMMITTEE

Budget Committee Chairman, Mary-Louise Woolsey came to request the Board of Selectmen reconsider their position on not allowing staff to attend Budget Committee meetings. She would like Mr. Welch and Mr. Schwotzer to come to the Budget Committee's June meeting and again in October during the budgeting process.

Chairman Moore responded to the request by stating that the Board does not want to prohibit good productive communications and is uncertain of the value of having staff members attending the June meeting. He would like to give the Board some time to contemplate the request and to determine the best method in which to provide the Committee information.

Mrs. Woolsey is impressed by Mr. Welch and Mr. Schwotzer's performance and would like very much for them to attend the Budget Committee meetings. She believes that their attendance would be in the best interest of the taxpayer.

III. MINUTES – MAY 7, 2007

The May 7, 2007 minutes stand approved as distributed.

IV. OLD BUSINESS

1. TOWN MANAGER'S REPORT

Mr. Welch is pleased to report that the flagpole at Winnacunnet and Locke Roads has been replaced in accordance to the direction of the Board.

The punch list of properties to be connected to the new beach sewer has been reduced to 62 remaining properties as of May 4, 2007. Mr. Welch has requested Public Works send a friendly reminder that the final action date is approaching.

Mr. Welch has granted permission for a continuation of the satellite parking program for the coming Seafood Festival from Friday afternoon through Sunday September 7 to 9, 2007.

The Town Manager reported that he and Department Heads concluded the first meeting with FEMA. Preliminary indications are that the Town will recover funds expended on emergency actions taken at the north seawall as well as our deductibles on insurable losses, overtime expenses and replacement of uninsured items.

Mr. Welch reminded residents that old TV's cannot be placed in the trash. There has been a case of commercial trash having several TV's in the load that was dumped; these devices are prohibited from the landfill.

Mr. Welch wished Mrs. Bridle-Russell and Mr. Moore a happy birthday. They both celebrate their birthday tomorrow May 15th.

2. DAY IN THE HAMPTONS – JUNE 9TH EVENT, USE OF GAZEBO

Mrs. Bridle-Russell MOTIONED to permit the use of the gazebo for the Day in the Hamptons special event (June 9, 2007). **Mr. Griffin SECONDED.**

VOTE: UNANIMOUS FOR

OTHER OLD BUSINESS

Mr. Griffin reported that he has been receiving complaints about the Marina advertising for a chef and restaurant manager.

Mr. Griffin questioned why the Town invested millions of dollars on the Beach Infrastructure project if new businesses or new owners of beach businesses are not permitted a trench permit to install necessary utility or waterlines to their property. He is frustrated by the Board's decision last week to not permit a trench permit for a new waterline to be installed along K Street for a new business owner.

The Board requested that the Aquarion Water Company trench permit be added to next week's agenda.

V. NEW BUSINESS

1. DEEDED PROPERTIES

Postponed until next week.

VI. CONSENT AGENDA

1. Hawkers & Peddlers License
2. Dance Hall Permit

Addition to consent agenda: Block Party – Pine Road from High Street to Victor Road on Sunday, May 27 from 12 noon to 8:30 p.m.

Mr. Griffin MOTIONED to approve the consent agenda as presented. **Mrs. Bridle-Russell SECONDED.**

VOTE: UNANIMOUS FOR

VII PUBLIC COMMENTS

Chairman of the Conservation Commission Ellen Goethel discussed the number of special permits that will be required for property owners wanting to rebuild their seawalls.

VIII. CLOSING COMMENTS:

Mrs. Bridle-Russell would like for the Board to address seawall stairways and patios. Mr. Moore commented on the current workload that the Board has such as resolving the private versus public road issue. Mr. Welch recognizes the need to address the seawall issue and will work on configuring a policy or plan to address the issue.

IX. ADJOURNMENT

Mrs. Bridle-Russell MOTIONED to adjourn at 10:55 p.m. **Mr. Lally SECONDED.**

VOTE: UNANIMOUS FOR

Chairman